14 **S.B. CIVIL WRIT PETITION NO.291/2004**
(DEEPA RAM V/s LABOUR COURT & Ors.)

DATE OF ORDER:- 19.07.2007

HON'BLE MR. DINESH MAHESHWARI,J.

Mr.Vijay Mehta for the petitioner
Mr.Ashok Chhangani for the respondent

The petitioner-workman Deepa Ram (since deceased and his legal representatives substituted by order dated 03.10.2006) has filed this writ petition assailing the award dated 27.09.2003 (Annex.3) made by the Labour Court, Jodhpur in Case No.323/1999 on a reference made by the State Government on 08.09.1999 on the question if removal of the petitioner-workman by his employer (Director, Central Arid Zone Research Institute, Jodhpur and Farm Superintendent, Central Arid Zone Research Institute, Jodhpur) was valid and proper?

The workman contended in his statement of claim that he was employed as casual labour on daily wages on 04.02.1973 and had been paid wages at Rs.7,11, and 13 per day; that the non-applicants removed him from service on 09.12.1983 without any notice; that after his removal the non-applicants made various appointments but he was not made any offer for appointment despite repeated requests; that he had worked for more than 240 days but was not given any

notice nor any notice pay; and that the non-applicants had removed him in violation of Sections 25-F and 25-H of the Industrial Disputes Act, 1947 and Rules 77 and 78 of the Industrial Disputes Rules, 1957. The respondents contended in their reply that the petitioner was employed on daily wages from 16.07.1978; that he was not removed from 09.12.1983 but was removed on 31.10.1985 for having not completed 240 days of service in any year during past 5 years; that the petitioner never came back nor made any application seeking appointment; and that the workmen named by him were employed for canteen work according to their eligibility.

The Labour Court, Jodhpur after considering the respective stand of the parties and examining the material placed on record, found incorrect the allegation of the petitioner that he was removed on 09.12.1983 inasmuch as he had worked in the year 1985 for 150½ days. The Tribunal observed thus:

> "स्वयं प्रार्थी ने अपने शपथ-पत्र में भी इन्हीं तथ्यों का उल्लेख किया है। उसका यह कथन है कि उसने 10 वर्ष काम किया। विपक्षी की ओर से आर.सी. भण्डारी फार्म अधीक्षक पेश हुए हैं जिनका यह कथन है कि प्रार्थी ने अक्टूबर 85 तक काम किया, प्रार्थी के कार्य दिवसों का विवरण भी पेश हुआ है जिससे स्पष्ट है कि प्रार्थी ने 1985 में 150-1/2 दिन काम किया है।
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> इस प्रकार प्रार्थी का यह कहना कि उसे 9.12.83 को सेवामुक्त कर दिया गया, पूरी तरह त्रुटीपूर्ण है क्योंकि विपक्षी के अनुसार प्रार्थी ने वर्ष 1984-85 में भी काम किया है। विपक्षी द्वारा प्रस्तुत इस विवरण का कोई खण्डन प्रार्थी की

ओर से नहीं किया गया है। ऐसी स्थिति में विपक्षी के कथन पर अविश्वास किये जाने का कोई कारण नहीं है।"

The learned Labour Court observed that in his written arguments the workman has alleged that in the year 1980 he worked for 266 days; and in the year 1982 for more than 214 days but such facts were not stated in the statement of claim or in the affidavit nor the non-applicant was cross-examined on such facts nor it was clarified as to how these facts suddenly came to the notice of the petitioner. The learned Labour Court further observed that the workman had filed certain letters of making request to the Department for taking him on work but has failed to establish that such letters were received by the non-applicants.

The Labour Court further observed that even according to the petitioner he was removed on 09.12.1983 whereas the dispute was referred in the month of September 1999 and there has not been any explanation for inordinate delay of 16 years except the petitioner stating that he had been regularly making requests and hence took up the litigation belatedly. The learned Labour Court, thus, found the petitioner not entitled for any relief.

Assailing the award aforesaid, it is contended on behalf of the petitioner that the respondents have not produced relevant evidence particularly in the form of attendance

register to prove that the petitioner had worked up to 31.10.1985; the finding that the petitioner had not completed 240 days in a year is not based on the material placed on record and remains perverse; that the learned Labour Court has not considered violation of the requirements of Section 25-G of the Act where the petitioner-workman was retrenched without publication of the seniority list and his juniors were retained; that fresh appointments were also made without any offer to the petitioner; and that the Labour Court has been in error in rejecting the reference on the ground of delay though the same was satisfactorily explained by the petitioner and delay cannot be said to be fatal on his rights.

Having given thoughtful consideration to the matter and having examined the material placed on record, this Court is satisfied that the impugned award does not call for any interference.

It is apparent on the face of the record that even while alleging termination way back in the year 1983, the petitioner raised the dispute at a very late stage and the reference was made only in the month of September 1999. The petitioner has offered only vague and uncertain explanation in relation to the delay that he was repeatedly requesting the respondents but has not adduced cogent corroborative evidence in this regard. In the circumstances of the case, the Labour Court cannot be

said to have erred in observing that there was no satisfactory explanation for delay.

Even on merits, the Labour Court has found in the first place that the petitioner was not correct in his assertion about the date of termination as 09.12.1983 because he had worked up to month of October 1985. It has also been found that the petitioner has not worked for 240 days in any calender year. Such findings recorded by the Labour Court remain essentially the findings of facts and cannot be said to be suffering from any perversity or apparent error. The petitioner has failed to show his having worked in any calender year for more than 240 days and the learned Labour Court has found that such fundamental fact was conspicuously missing in the statement of claim and affidavit; and the suggestion as made in the written arguments before the learned Labour Court has rightly been rejected for having not been stated in the statement of claim or in the affidavit and for the non-applicant not having been cross-examined on such facts, of his having worked for more than 240 days in the year 1980 and in the year 1982. The considerations adopted by the learned Labour Court do not suffer from any error and call for no interference.

Submissions of the petitioner with reference to Sections 25-G and 25-H of the Act are also vague and uncertain and there does not appear any reliable evidence on record to find

that any person placed on the work later than the petitioner was retained in employment or that any person was later on offered the same employment ignoring the petitioner. It appears that the petitioner a daily wage casual labourer has taken up this litigation at late stage without any basis. The learned Labour Court cannot be said to have erred in answering the reference against the petitioner.

In an overall view of the matter, this Court is satisfied that no case is made out for interference in writ jurisdiction of this Court.

The petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI),J.